

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In the application of)
NICK E. CIAVARELLA, et al.)
Serial No. 10/693,534)
Filed: October 25, 2003)
For: UNIVERSAL ADAPTER CLIP)

CERTIFICATE OF MAILING

I hereby certify that this correspondence was deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on July 27, 2006.

Martha L. Hastings
Martha L. Hastings
Sec'y. to Shannon V. McCue, Reg. No. 42,859

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Commissioner for Patents
Alexandria, VA 22313-1450

APPEAL BRIEF

Sir:

This is an Appeal to the Board of Patent Appeals from the final decision dated February 9, 2006, of the primary Examiner finally rejecting claims 1, 3, and 6-14. A Notice of Appeal was filed on April 25, 2006.

I. Real Party in Interest

The above-identified application was filed on October 25, 2003, and assigned Serial No. 10/693,534, naming Nick E. Ciavarella, Mark E. Rosenkranz, Martin O'Toole, and Detlev Franz Smith as inventors. Their rights were assigned to Joseph S. Kanfer. The Assignment was recorded by the United States Patent and Trademark Office at Reel/Frame 014716/0687.

II. Related Appeals and Interferences

None.

III. Status of Claims

The application was originally filed with 14 claims. In the first Office Action, claims 1, 3, and 6-14 were rejected. The Examiner indicated that claims 2, 4, 5, and 8 contained allowable subject matter but were objected to as being dependent upon a

rejected base claim. In the first response, the Applicants made one amendment correcting an error in claim 8. After the Applicants' response, the Examiner issued a final Office Action rejecting claims 1, 3, and 6-14 on the same grounds stated in the first Office Action. Claims 2 and 4-5 were again indicated as containing allowable subject matter but objected to as being dependent upon a rejected base claim. The claims to be reviewed on appeal are claims 1, 3, and 6-14.

IV. Status of the Amendments

Claim 8 was amended to correct an inconsistency in the reference to a flange. Also, the specification and drawings were amended to address objections made by the Examiner. These amendments have been entered.

V. Summary of the Claimed Subject Matter

The present invention relates to a universal adapter clip that may be attached to a container used in a dispenser having a keying system, where the universal adapter clip secures the container within the dispenser while bypassing the keying system (spec. pg. 7, lines 25-30).

The universal adapter clip was developed because existing dispensers often include a receiver that includes a key-plate having a recessed keyway formed therein that mates with a projecting key formed on the container or a collar attached to the container. In this way, a unique fit is established between the container and the dispenser (spec. pg. 1, ¶ 3- pg. 2, ¶ 1).

While these systems offer advantages in that the proper container will be associated with the appropriate dispenser, due to the proliferation of different dispensers, some consumers would prefer to simplify the stocking of replacement containers by purchasing a container that may be used universally with all of the various dispensers, irrespective of any keying system associated with those dispensers (spec. pg. 2, ¶ 2).

With that in mind, the invention, as claimed in independent claim 1, provides a universal adapter clip 40 comprising a hollow body 41 that is attachable to the container 20 with a flange 43 extending radially outward from the body 41 and at

least one tab 50 extending rearwardly from the body 41, axially spaced from the flange 43 to receive the key-plate 31 therebetween when the container 20 is inserted within the dispenser 10 (Spec. pg. 5, line 27—pg. 7, line 2, Figs. 2-5). By capturing the key-plate 31 between the flange 43 and the tab 50, the container 20 is secured within the dispenser 10 in terms of axial movement (spec. pg. 6, lines 25—pg. 7, line 2).

Claim 3 depends from claim 1 and adds the limitation that the flange 43 include a downwardly extending rim 47 that contacts the top surface of the key-plate 31 (spec. pg. 6, lines 18-22, Figs 2 and 5).

Claim 6 depends from claim 1 and adds the limitation that the hollow body 41 is semi-circular and opens rearwardly towards the dispenser 10 (spec. pg. 7, lines 7-13 and Figs. 4-5).

Claim 7 depends from claim 1 and adds the limitation that the body 41 is opened at either axial end so that a portion of the container 20 may be received therethrough (spec. pg. 5, line 29—pg. 6, line 4, Figs. 3-5).

Claim 8 depends from claim 7 and adds the limitation that the top flange 43 include a radially inward extending portion 43a that is adapted to grasp a projecting surface 22a on the container 20 (spec. pg. 6, lines 6-9, Fig. 4).

Claim 9 depends from claim 1 and adds the limitation that the universal adapter clip defines a notch 62 adapted to receive a locating projection 34 on the container 20 (spec. pg. 7, lines 20-24, Fig. 3).

Claim 10 depends from claim 1 and includes the limitation that the universal adapter clip 40 include a hold 60 formed on the hollow body 41 (spec. pg. 7, lines 13-20 and Fig. 3).

Claim 11 depends from claim 10 and adds the limitation that the hold 60 include a pair of vertically extending ribs 61 extending forwardly from the body opposite the key-plate 31 (spec. pg 7, lines 13-20 and Fig. 3).

Claim 12 is an independent claim to a universal adapter clip 40 including a pair of tabs 50 that extend rearwardly from a body 41 that is attachable to the container 20 and a rim 47 formed on a top portion of the body 41 extending over a portion of the receiver 30 within the dispenser 10 so that the receiver 30 is at least partially received

between the rim 47 and the tabs 50 to secure the container 20 within the dispenser 10 (spec. pg. 5, line 27—pg. 7, line 2, Figs. 2-5).

Claim 13 is an independent claim directed to a universal adapter clip 40 for securing a container 20 within a soap dispenser 10 that has a key-plate 31, where the universal adapter clip 40 comprises a semi-circular body 41 that opens on a rearward side to receive a portion of the container 20 and has an annular base 46 defining an opening through which the nozzle 25 of the dispenser 10 extends, a pair of tabs 50 extending rearward from the base 46 and being stepped downward at 55 to extend beneath the key-plate 31 while a top flange 43 formed at an upper edge 44 of the body 41 extends radially inward at 43a to support said body 41 and a portion of the container 20 and extends radially outward at 43 to fit over the key-plate 31 so that the key-plate 31 is secured between the top flange 43 and the tabs 50 (spec. pg. 5, line 27—pg. 7, line 2, Figs. 2-5).

Claim 14 depends from claim 13 and adds the limitation of a rim 47 extending downward from the top flange 43 to contact the top surface 32 of the key-plate 31 (spec. pg. 6, lines 18-22).

These claims are distinguished from the prior art in that no such adapter clip is disclosed.

VI. Grounds of Rejection to be Reviewed on Appeal

Independent claims 1, 12, and 13 all include the limitation that the universal adapter clip includes a hollow body that attaches to a container and has a flange and tabs axially spaced from each other so that they capture the key plate therebetween to secure the container, irrespective of any keying system on the key-plate.

The Examiner rejected claims 1, 3, and 6-14 as anticipated by U.S. Patent No. 6,607,103 to Gerenraich, et al. The Examiner argues that Gerenraich shows a dispenser, as seen in Figs. 5 and 6, having a clip seen in Fig. 6 used in connection with a soap container 22 and having a key-plate 44, a semi-circular hollow body 88, a flange 80 extending radially outward, a tab 126 extending rearward, and vertical ribs, as seen in Fig. 10, a rim extending downwardly, as seen in Fig. 7, a locating notch 82, and holding elements 84 and 92.

Following the final Office Action, the Applicants contacted the Examiner to gain a better understanding of the Examiner's rejection. The Examiner explained that he believes that the parts referred to separately in the Figures are assembled in Figs. 7 and 8 to anticipate claim 1. The Applicants respectfully disagree with the Examiner's position because the universal adapter clip is claimed as a hollow body that attaches to a container having a flange and tab that extend from it, without any required assembly, capable of securing a container within a keyed dispenser while bypassing the keying system.

VII. Argument

A. Since Gerenraich does not disclose the claimed arrangement of elements, it does not anticipate claims 1, 3, and 6-14.

To anticipate, a reference must have elements arranged as required by the claim. MPEP § 2131, *citing, In re Bond*, 910 F.2d 831 (Fed. Cir. 1990). Gerenraich does not disclose a hollow body that attaches to a container having an axially spaced flange and tab extending from it, as claimed in claims 1,3, and 6-14.

The Examiner argues that Gerenraich shows:

a dispenser as seen in Figs. 5 and 6, having a clip seen in Fig. 6 used in connection with a soap container 22 and having a key-plate 44, a semi-circular hollow body 88, a flange 80 extending radially outward, a tab 126 extending rearward and vertical ribs as seen in Fig. 10, a rim extending downwardly as seen in Figs. 7 and locating notch 82, holding elements 84 and 92.

The Applicants respectfully disagree because the flange 80 and tab 126, referenced by the Examiner, do not extend from a hollow body that attaches to Gerenraich's container. The Examiner's rejection relies on an assembly of parts found on separate structures within the Gerenraich patent but not related in the manner claimed by the Applicants. In particular, flange 80 is located on the support frame of the dispenser, while tab 126 is attached to the container. The swing arm 88, which the Examiner contends is a hollow body, is not attachable to the container, as claimed, but instead is pivotally mounted on the support frame. Since Gerenraich does not disclose a hollow body that attaches to a container, and has a flange and a tab extending from it,

Gerenaich does not anticipate the claimed invention. Similarly, Gerenaich does not teach the spacing of the tab and flange on the hollow body to receive a keyplate therebetween.

Similarly, independent claim 12 claims an adapter clip having a rim that extends over a portion of a receiver and a pair of tabs that extend rearwardly from the body of the clip and are insertable beneath the receiver to capture the receiver therebetween. Again, in this way, the claimed universal adapter clip avoids any keying system formed on the receiver, yet secures the container against unwanted axial movement ordinarily prevented by the keying system. Again, Gerenaich does not disclose such a rim and tabs and does not contemplate the avoidance of such a keying system.

Independent claim 13 is also allowable for the same reasons because claim 13 claims a top flange having a radially extending portion that fits over the key-plate and tabs that extend beneath the key-plate to capture it therebetween. Also, claim 13 defines the separate allowable feature of the top flange having an inwardly extending portion that engages the container to support the clip on the container. Also claim 13 claims the clip as having a semi-circular body that opens on a rearward side, which prevents the adapter clip from interfering with the insertion of the container within certain dispensers. This feature is not disclosed in Gerenaich.

Dependent claims 6-11, which depend from claim 1, and claim 14, which depends from claim 13, should be allowable based on their dependency, but those claims are independently allowable, as well. For example, claim 6 includes the feature that the hollow body is semi-circular and opens rearwardly relative to the dispenser. As discussed with respect to claim 13 above, this feature is not disclosed by Gerenaich. Claim 7 discloses the feature that the hollow body is open at either end to allow a portion of the container to extend therethrough in attaching the hollow body to the container. Claim 8 adds the feature that the flange include a radially inward extending portion that grasps a projecting surface on the container. As mentioned above, Gerenaich's flange is not found on the hollow body and further does not show an inward extending portion. Claim 9 depends from claim 1 and adds a notch to the clip that is adapted to receive a locating projection on the container. Gerenaich does

not show such a notch nor does it show a projection on its container that would be received in such a notch. The collar in Gerenraich simply threads onto the container. Claim 10 depends from claim 1, and adds a hold formed on the hollow body. Claim 11 depends from claim 10, and further specifies that the hold includes a pair of vertically extending ribs. Gerenraich does not show a hold or vertically extending ribs. Dependent claim 3, which depends from claim 1, and dependent claim 14, which depends from claim 13, each add a rim that extends downwardly from the top flange and is adapted to engage a top surface of the key-plate. The Examiner refers to Figs. 7 and 8 of Gerenraich, but no rim extending downwardly from a flange that extends from the hollow body is shown. Consequently, the Applicants respectfully disagree with the Examiner's assertion that the features found in dependent claims 3, 6-11 and 14 are anticipated by Gerenraich.

Since the claimed elements are not shown in Gerenraich or, at the least, are not arranged in the manner described in the claims, under MPEP § 2131, Gerenraich does not anticipate claims 1, 3, and 6-14.

B. Moreover, Gerenraich does not enable one skilled in the art to practice the claimed invention.

“For a publication to constitute an anticipation of an invention . . . it must be capable, when taken in conjunction with the knowledge of those skilled in the art to which it pertains of placing that invention in the possession of the public.” *In re Donohue*, 632 F.2d 123 (C.C.P.A. 1980). Gerenraich differs significantly from the claimed invention in that keying is intended, and, thus, Gerenraich does not enable the bypassing of a keying system as claimed. In the claimed invention, the flange and tab that extend from the hollow body are spaced axially to receive an axially extending keyplate therebetween. In this way, the flange and tab limit axial movement of the container by extending above and below the keyplate, while bypassing any keying system formed in its face. Gerenraich does not disclose this arrangement of the claimed elements, and is not enabling because, in Gerenraich, keying is intended.

In particular, the flange 80, to which the Examiner refers, is not carried on the container but forms part of the dispenser base and acts as a horizontally extending frame and key-plate. As described in detail in column 3, lines 38-61, the frame 80

includes an opening through which a nozzle of the pump assembly extends, causing the bottle assembly 22 to be supported on the frame 80 by upwardly extending posts 84 extending therefrom. A depression is formed in the surface of frame 80 to receive alternate styles of flanges to enable coupling in a unique and keyed manner with various bottle assemblies 22. Thus, it can be seen from Gerenraich that it does not contemplate an axially extending key-plate having a keyway formed in its axially extending surface, but relies on a horizontally extending key-plate with depressions that capture a flange in a designated radial position. As best shown in Fig. 5, Gerenraich's flange 74 is designed to rest within depression 82 (Fig. 6). This system contrasts with systems using an axially extending key-plate in that the key-plate does not restrict axial movement of the bottle.

The Examiner also argues that Gerenraich includes a semi-circular hollow body 88. This component is a snap arm mounted on frame 80 and does not form any part of the clip. As described in column 3, lines 54-61 of Gerenraich, a snap arm 88 is provided to resist upward acting actuation forces that might dislodge the bottle from the frame. In contrast, the Applicants' invention includes a hollow body that attaches to the container and has a flange and tab extending therefrom. The flange and tabs are spaced on the hollow body so that the key-plate is received between them, and are designed to bypass the keying system on the key-plate. As claimed, the Applicants' invention includes a flange having a radially extending portion that extends above the axially extending key-plate and a tab that extends beneath the axially extending key-plate to secure the container against the upward acting forces of the pump. Ordinarily, a key projecting from the container's pump collar would fit within the keyway formed in the axially extending key-plate to perform this function. By providing a flange and tab capable of capturing the entire key-plate therebetween, the Applicants' adapter clip allows a container to be secured against the upward acting forces of the pump's actuation without a key and bypasses the keying system formed by the axially extending key-plate. To that end, the claimed adapter clip includes a hollow body that fits onto the container having an axially spaced flange and tab that capture the key-plate as described. Consequently, even if the snap arm 88 was considered to be a hollow body, Gerenraich does not enable one skilled in the art to

practice the claimed invention because the extension of the tab and flange from this body to receive a keyplate therebetween and bypass the dispenser's keying system is not disclosed. Without an enabling disclosure, Gerenraich does not anticipate claims 1, 3, and 6-14.

In conclusion, since Gerenraich does not disclose a hollow body having an axially spaced flange and tabs adapted to bypass keying systems having an axially extending key-plate, the Applicants respectfully requests reconsideration of the foregoing rejections and entry of a notice of allowance for claims 1-14.

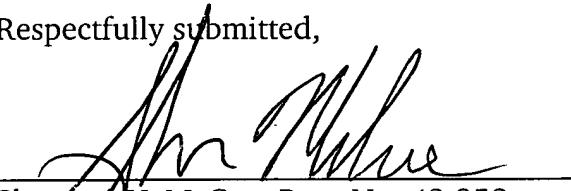
VIII. Claims Appendix

Attached.

IX. Evidence Appendix

N/A

Respectfully submitted,



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CLAIMS APPENDIX



1. (Original) A universal adapter clip used in connection with a container that is received within a soap dispenser having a key-plate, the clip comprising:
 - a) a hollow body attachable to the container;
 - b) a flange extending radially outward from said body; and
 - c) a tab extending rearwardly from said body and axially spaced from said flange to receive the key-plate therebetween upon insertion of the container within the dispenser.
3. (Original) The universal adapter clip of Claim 1 further comprising a rim extending downwardly from a radial outer extremity of said flange, wherein said rim is adapted to contact a top surface of the key-plate.
6. (Original) The universal adapter clip of Claim 1, wherein said body is semi-circular and opens rearwardly relative to the dispenser.
7. (Original) The universal adapter clip of Claim 1, wherein said body is opened at either axial end and adapted to receive a portion of the container therethrough.
8. (Previously Presented) The universal adapter clip of Claim 7, wherein said flange includes a radially inward extending portion adapted to grasp a projecting surface on the container.
9. (Original) A universal adapter clip of Claim 1 that defines a notch adapted to receive a locating projection on the container.
10. (Original) The universal adapter clip of Claim 1 further comprising a hold formed on said body.

11. (Original) The universal adapter of Claim 10, wherein said hold includes a pair of vertically extending ribs extending forwardly from said body opposite the key-plate.
12. (Original) A universal adapter clip for securing a container within a soap dispenser, where the dispenser has a receiver, the universal adapter clip comprising a body attachable to the container; a pair of tabs extending rearwardly from said body, said tabs being insertable beneath the receiver; a rim formed on a top portion of said body said rim extending over at least a portion of the receiver, wherein the receiver is at least partially received between said rim and said tabs.
13. (Original) A universal adapter clip for securing a container within a soap dispenser, where the dispenser has a key-plate, the universal adapter clip comprising a semi-circular body open on a rearward side to receive a portion of the container; an annular base defining an opening through which a nozzle of the dispenser extends; a pair of tabs extending rearward from said bottom flange, wherein each end of said tabs steps downward from said bottom flange to extend beneath the key-plate upon insertion; a top flange formed at an upper edge of said body extending radially inward to support said body on a portion of the container and extending radially outward to form a radially outward extending portion adapted to fit over the key-plate, wherein said radially outward extending portion and said end of said tabs are axially spaced to receive the key-plate therebetween.
14. (Original) The universal adapter clip of Claim 13 further comprising a rim extending downward from said top flange, wherein said rim is adapted to engage a top surface of said key-plate.

EVIDENCE APPENDIX

None.

RELATED APPEALS AND INTERFERENCES APPENDIX

None.

AF/IFW



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Martha L. Hastings

Martha L. Hastings
Sec'y. to Shannon V. McCue, Reg. No. 42,859

TRANSMITTAL SHEET

Enclosed are the following documents:

Response to Examiner's Notification of Non-Compliant Appeal Brief
 (with Certificate of Mailing)
 Appeal Brief (with Certificate of Mailing)
 Claims Appendix
 Evidence Appendix
 Related Appeals and Interferences Appendix
 Return Postcard

AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT

The Commissioner is hereby authorized to charge payment of any fees associated with this communication or credit any overpayment to Deposit Account No. 18-0987.

Respectfully submitted,

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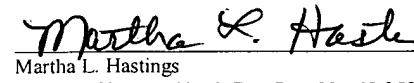


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Martha L. Hastings
Sec'y. to Shannon V. McCue, Reg. No. 42,859

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**RESPONSE TO EXAMINER'S NOTIFICATION
OF NON-COMPLIANT APPEAL BRIEF**

Sir:

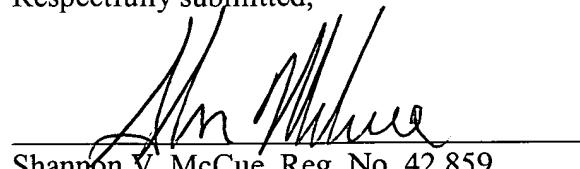
The summary of the claimed subject matter is contained in Section V, *see*, M.P.E.P. § 1205.02, and includes the necessary references to the specification by page and line number. Reference numbers from the drawings have been added. If additional information is necessary, please let me know.

As indicated in the Brief, there were no related proceedings and, therefore, no Related Appeals and Interferences Appendix was attached. Also, as indicated in the Brief, no evidence was applied, and, consequently, no Evidence Appendix was attached to the Appeal Brief. We have now attached an Evidence Appendix and a Related Appeals and Interferences Appendix indicating "None."

With respect to the claims appendix, we were uncertain whether all of the claims should be included because all of the independent claims are at issue in the appeal. We have removed those claims that the Examiner has merely objected to as being dependent from a non-allowable base claim, namely, claims 2, 4, and 5.

Please contact the undersigned attorney at 330-761-6669.

Respectfully submitted,



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